## STATE OF MICHIGAN

## COURT OF APPEALS

SUN/FOREST, L.L.C., SUN/FROST HOLDINGS, L.L.C., SUN/COMMUNITIES OPERATING LIMITED PARTNERSHIP, SUNCHAMP, L.L.C., SUNCHAMP HOLDINGS, L.L.C., SUN COMMUNITIES, INC., GARY A. SHIFFMAN, and ARTHUR A. WEISS UNPUBLISHED March 13, 2007

Plaintiffs-Appellants,

V

TJ HOLDINGS, L.L.C.,

Defendant-Appellee.

No. 262155 Oakland Circuit Court LC No. 2003-048710-CK

Before: Wilder, P.J., and Kelly and Borrello, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's partial denial of their motion to compel arbitration. The trial court concluded that defendant's claims arising from the operating agreement were not arbitrable, while their claims arising from a separate assignment agreement were arbitrable. Plaintiffs argue that all of defendant's claims were subject to arbitration. We agree, and reverse in part and remand.

## I. Facts

In September 2000, the defendant and plaintiff Sun/Forest Holdings, LLC. entered into two agreements. The first was an assignment agreement, which assigned a portion of Sun/Forest Holdings' membership interest to defendant. This agreement contained an arbitration provision, which provided: "In the event of any dispute concerning this Assignment or any of the transactions contemplated hereby, the parties agree to submit such dispute to binding arbitration". The second was an operating agreement, establishing the constitution and operation of the company, as well as the rights and obligations of members. The operating agreement contained no arbitration provision.

The relationship between the parties soured and plaintiffs filed a complaint that alleged that defendant had "threatened to file suit in state court in the state of North Carolina relating to a number of disputes arising solely under the Sun/Forest Agreements." They further alleged that, to the extent defendant had any rights with respect to the transaction at issue, those rights arose

from the assignment and operating agreements, which were subject to arbitration in Michigan. Plaintiffs contended that defendant's threatened North Carolina suit was forum shopping intended to avoid arbitration. The first count of plaintiff's complaint requested that the trial court compel arbitration of defendant's claims against them. The second count of plaintiffs' complaint sought, in the alternative, a declaratory judgment of the rights of the parties. In its answer, defendant asserted as affirmative defenses that plaintiffs failed to state a claim upon which relief could be granted, the doctrine of forum non conveniens, and that another action was initiated between the same parties involving the same claims.<sup>1</sup>

Plaintiffs subsequently moved to compel arbitration. The trial court determined that arbitration was required for the claims of fraud/misrepresentation, unfair and deceptive acts and practices, and punitive damages.<sup>2</sup> But, it denied plaintiffs' motion for arbitration for claims of breach of fiduciary duty, breach of contract, aiding and abetting a breach of fiduciary duty, and illegal acts of controlling member/manager, MCL 450.4515, reasoning that these claims arose out of the operating agreement, and thus were not subject to the assignment agreement's arbitration clause. It likewise denied plaintiffs' motion for partial reconsideration. Plaintiffs appeal of right.<sup>3</sup>

## II. Analysis

The determination of the arbitrability of a dispute is a question of law subject to de novo review. *Madison Dist Pub Schools v Myers*, 247 Mich App 583, 594; 637 NW2d 526 (2001). "The existence of an arbitration agreement and the enforceability of its terms are judicial questions for the court," and these questions are also reviewed de novo. *Watts v Polaczyk*, 242 Mich App 600, 603; 619 NW2d 714 (2000).

Michigan's public policy strongly favors arbitration, *Jozwiak v Northern Michigan Hospitals, Inc*, 207 Mich App 161, 165; 524 NW2d 250 (1994), in order to resolve disputes. *Rembert v Ryan's Family Steak Houses, Inc*, 235 Mich App 118, 128; 596 NW2d 208 (1999). The purpose of arbitration is to avoid prolonged litigation, and its effect is to narrow a party's legal right to pursue litigation. *NuVision v Dunscombe*, 163 Mich App 674, 684; 415 NW2d 234 (1987). Arbitration is a matter of contract, and arbitration agreements are generally interpreted in the same manner as ordinary contracts. *Bayati v Bayati*, 264 Mich App 595, 599; 691 NW2d

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<sup>&</sup>lt;sup>1</sup> The "other" action referred to by defendant was a complaint that defendant filed in North Carolina shortly after the instant suit had been filed. Defendant's North Carolina complaint alleged fraud/misrepresentation, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, breach of contract, illegal acts of controlling member/manager pursuant to MCL 450.4515, unfair and deceptive acts and practices, and requested punitive damages. The North Carolina litigation was stayed pending the outcome of this case.

<sup>&</sup>lt;sup>2</sup> These claims are not at issue in this appeal.

<sup>&</sup>lt;sup>3</sup> Plaintiffs had earlier filed for leave to appeal, but leave was denied because there was no final order. *Sun/Forest LLC v TJ Holdings, LLC*, unpublished order of the Court of Appeals, entered July 7, 2004 (Docket No. 254292).

812 (2004). In order to effectuate the intent of the parties, arbitration agreements must be enforced according to their terms. *Id.* To ascertain the parties' intent, and therefore the arbitrability of an issue, a court must consider (1) whether there is an arbitration provision in the parties' contract; (2) whether the issue is arguably within the arbitration clause; and (3) whether the dispute is expressly exempt from arbitration by the terms of the contract. *Madison Dist Pub School, supra* at 595. Doubts about whether an issue can be arbitrated should be resolved in favor of arbitration. *Watts, supra* at 608.

The arbitration provision of the assignment agreement provides: "In the event of *any dispute concerning* this Assignment or *any of the transactions contemplated hereby*, the parties agree to submit such dispute to binding arbitration." (Emphases added.) The dispute in this matter is a "dispute concerning . . . any of the transactions contemplated" by the assignment agreement, because the assignment agreement expressly mentions the operating agreement transaction. The assignment agreement provides:

[Defendant] hereby accepts the assignment . . . and assumes and agrees to perform all of it [sic] obligations as specified in the Operating Agreement which arise from and after the date of this Assignment with respect to the Assigned Interest.

\* \* \*

Contemporaneous with the execution and delivery of this Assignment, Assignor and Assignee have executed and delivered the Operating Agreement. Assignee hereby accepts and adopts all terms and provisions of the Operating Agreement and agrees to be bound by the Operating Agreement with respect to those matters first arising from and after the date of this Assignment.

Thus, the assignment agreement clearly contemplates the operating agreement transaction. Because the assignment agreement contemplates the operating agreement transaction, a dispute arising under the operating agreement is a "dispute concerning . . . any of the transactions contemplated," under the terms of the arbitration clause. Thus, even if the two agreements are not read together, the arbitration provision of its own accord encompasses "any dispute concerning . . . any of the transactions contemplated" by the assignment agreement.

We find defendant's assertion that the plain language of the operating agreement supercedes the assignment agreement, to be unavailing. By its own terms, the operating agreement supersedes the assignment agreement only with respect to "the subject matter" addressed in the operating agreement.

This Court must enforce the terms of the arbitration clause as written, *Bayati, supra* at 599, as well as resolving any doubts in favor of arbitration, *Watts, supra* at 608. Accordingly, we conclude that the trial court erred in holding that the claims of breach of fiduciary duty, breach of contract, aiding and abetting a breach of fiduciary duty, and illegal acts of controlling member/manager, MCL 450.4515 were not required to be arbitrated.

Reversed in part and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly /s/ Stephen L. Borrello